STATE OF MICHIGAN

COURT OF APPEALS

In re RAH, Minor.

UNPUBLISHED
April 25, 2017

No. 335382
Kent Circuit Court
Family Division
LC No. 16-026436-AM

Before: BECKERING, P.J., and MARKEY and SHAPIRO, JJ.

PER CURIAM.

The Michigan Children's Institute (MCI) denied petitioner's request that she be permitted to adopt RAH rather than the child's guardian with whom RAH had lived with for the prior three years. Petitioner sought review in the circuit court, which dismissed her claim. She now appeals the circuit court's decision. We affirm.

Whether the trial court properly reviewed a decision of the MCI to withhold consent for adoption is a question of law reviewed for clear legal error. *In re Keast*, 278 Mich App 415, 423; 750 NW2d 643 (2008). Clear legal error occurs "[w]hen a court incorrectly chooses, interprets, or applies the law." *Fletcher v Fletcher*, 447 Mich 871, 881; 526 NW2d 889 (1994).

"Under MCR 2.504(B)(2), involuntary dismissal of a hearing tried without a jury is appropriate when, after the presentation of the plaintiff's evidence, the court determines, based on the facts and the law, that the plaintiff has no right to relief." *In re ASF*, 311 Mich App 420, 427; 876 NW2d 253 (2015). "Under [MCR 2.504(B)(2)] 'a motion for involuntary dismissal calls upon the trial judge to exercise his function as trier of fact, weigh the evidence, pass upon the credibility of witnesses and select between conflicting inferences.' " *Id.*, quoting *Marderosian v Stroh Brewery Co*, 123 Mich App 719, 724; 333 NW2d 341 (1983). "The plaintiff is not entitled to the most favorable interpretation of the evidence." *Id*.

"Pursuant to MCL 710.45, a family court's review of the superintendent's decision to withhold consent to adopt a state ward is limited to determining whether the adoption petitioner has established clear and convincing evidence that the MCI superintendent's withholding of consent was arbitrary and capricious." *In re Keast*, 278 Mich App at 423. "The generally accepted meaning of arbitrary is determined by whim or caprice or arrived at through an exercise of will or caprice, without consideration or adjustment with reference to principles, circumstances, or significance, . . . decisive but unreasoned." *Id.* at 424 (quotation marks and citations omitted). "The generally accepted meaning of capricious is apt to change suddenly; freakish; whimsical; humorsome." *Id.* at 424-425 (quotation marks and citations omitted).

After reviewing the evidence, the trial court concluded that it could not "find by clear and convincing evidence that the superintendent's decision was arbitrary and capricious." The court stated:

> The decision was based on the entirely rational reason that the child had been previously placed in a temporary guardianship with the petitioner. Which was dissolved after two months due to the child's excessive school absences. That the child has been in a stable home with [her guardian] since 2013. And is attached to [her guardian] and other household members.

The court noted that RAH had been in her guardian's care more than three years and that there was no evidence that the guardian had been abusive or neglectful.

The court stated, regarding petitioner, that she did not dispute that RAH had "excessive absenteeism" from school during her guardianship, which was dissolved after only two months. The court further noted that petitioner did not dispute that she had physical ailments that sometimes caused her to be "bedridden for some period of time." In regard to petitioner's financial situation, the court stated that "[b]eing poor does not equate to being a bad or unfit parent," but that "the [MCI] superintendent's concerns over a prospective adoptive parent's potential inability to keep utilities paid is not irrational." And the trial court observed that RAH's established home with her guardian for the last three years was a permissible, important, and "even at times [an] over-riding consideration" for the MCI's decision.

Petitioner did dispute some of the findings set forth in the MCI report, particularly regarding the reasons for RAH's absences from school, the impact of petitioner's health issues on caring for RAH, and her financial situation. But the trial court's conclusions on these matters were not unsupported by the record evidence. And the MCI Superintendent testified that an investigation was undertaken into petitioner's complaints about the care RAH's guardian was providing, the result being that the complaints were unsubstantiated.

Regarding our review of an MCI decision to withhold consent to adopt:

> [T]he focus is not whether the representative made the "correct" decision or whether the probate judge would have decided the issue differently than the representative, but whether the representative acted arbitrarily and capriciously in making the decision. Accordingly, the hearing under § 45 is not, as petitioners seem to suggest, an opportunity for a petitioner to make a case relative to why the consent should have been granted, but rather is an opportunity to show that the representative acted arbitrarily and capriciously in withholding that consent. . . . [*In re Cotton*, 208 Mich App 180, 184; 526 NW2d 601 (1994).]

In light of the length of time RAH had resided with her guardian and the possible impact petitioner's health and finances could have on petitioner's ability to care for RAH, the trial

court's decision that the MCI's decision to withhold consent for adoption was not arbitrary and capricious. No clear legal error has been shown.

Affirmed.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Douglas B. Shapiro